


**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FILED BY  D.G.
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**LECTROLARM CUSTOM
SYSTEMS, INC.,**

Plaintiff,

v.

VICON INDUSTRIES, INC., et al.,

Defendants.

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NO. 03-2330 Ma/An

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN. MEMPHIS

ORDER

Before the Court is Defendant GE Interlogix, Inc.'s ("GE") Motion to Compel the Deposition of William V. Smith, or in the Alternative, to Compel the Production of a Detailed Description of Mr. Smith's Medical Condition filed on March 11, 2005.

Mr. William V. Smith ("Smith") is 73 years old and is Plaintiff's president and founder. Although Defendants issued a Notice of Deposition for Smith on October 29, 2004, Plaintiff argues that Smith should not be required to appear at a deposition because of a medical condition and disability. Plaintiff has provided Defendants with a handwritten note from Dr. Daniel S. Fearnow, Smith's treating physician, which states that Smith is unable to appear for a deposition. The note specifically notes that Smith "is, at present, not able to provide a deposition in connection with his company's lawsuit." (Mem. in Opp. to Mot. to Compel, at 3). Smith suffered from an aneurism, which Plaintiff argues has affected his memory and physical health. Plaintiff argues that while Smith is recovering, he is nevertheless "physically frail" and "has not

fully regained his mental faculties, is easily confused, and cannot recall what was just said moments earlier.” (Mem. in Opp. to Mot. to Compel, at 1). GE requests in its motion for the Court to enter an Order compelling Plaintiff to produce Smith for a deposition or to provide GE with a detailed description of Smith’s medical condition and prognosis for recovery.

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party” Fed. R. Civ. P. 26(b)(1). Relevancy means that the evidence “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). The Court should broadly interpret whether evidence is relevant. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.12 (1978). Therefore, so long as he has relevant information, GE is entitled to depose Smith. Nevertheless, the Court should order a protective order and prevent discovery from taking place in order to “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). The Court should not allow Defendants to harass or oppress Smith if he is medically unable to appear for a deposition; therefore, the Court should balance the rights of GE to pursue relevant information with the right of Smith not to be oppressed, embarrassed, or subjected to an undue burden.

While Plaintiff provided Defendants with Dr. Fearnow’s note, the note was provided almost eight months ago in November 2004. Therefore, after due consideration, it is **ORDERED** that Plaintiff shall be required to supply the Court with a report from Smith’s primary treating physician for *in camera* review. Plaintiff’s medical report shall describe, in detail, Smith’s current physical and mental condition. The report shall contain a detailed report on the extent of Smith’s memory loss, whether doctors can objectively say if the aneurism has

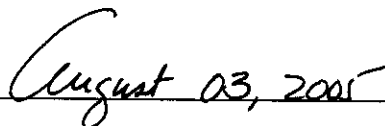
materially effected Smith's memory, and whether Smith is still able to recall facts and information relevant to this lawsuit. The treating physician shall also be required to conclude, based upon a reasonable degree of medical certainty, whether or not Smith is capable of appearing for a deposition. If the treating physician concludes that Smith is not capable of being deposed, the physician should make a determination on the likelihood or possibility of Smith being available for a deposition in the future.

Plaintiff shall supply the Court with the medical report within 20 days of entry of this Order. After the Court reviews the medical report, the Court will make a determination on the instant motion.

IT IS SO ORDERED.



S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: _____



Notice of Distribution

This notice confirms a copy of the document docketed as number 423 in case 2:03-CV-02330 was distributed by fax, mail, or direct printing on August 4, 2005 to the parties listed.

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Honorable Samuel Mays
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